

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CHERIE DIANE MAACK
919 1/2 Link Lane
Santa Rosa, CA 95401
Registered Nurse License No. 681933

Respondent.

Case No. 2008-206

OAH No. 2008020080

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 30, 2008.

It is so ORDERED April 30, 2008.

LaTranene W Tate

FOR THE BOARD OF REGISTERED NURSING

DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON, State Bar No. 161032
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5558
Facsimile: (415) 703-5480

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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 CHERIE DIANE MAACK
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Santa Rosa, CA 95401
Registered Nurse License No. 681933

14 Respondent.

Case No. 2008-206

OAH No. 2008020080

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
20 the Board of Registered Nursing. She brought this action solely in her official capacity and is
21 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
22 by Char Sachson, Deputy Attorney General.

23 2. Respondent Cherie Diane Maack (Respondent) is represented in this
24 proceeding by attorney Stephen M. Gallenson, whose address is 1100 Mendocino Avenue
25 Santa Rosa, CA 95401.

26 3. On or about June 29, 2006, the Board of Registered Nursing issued
27 Registered Nurse License No. 681933 to Cherie Diane Maack (Respondent). The Registered
28 Nurse License was in full force and effect at all times relevant to the charges brought in

1 Accusation No. 2008-206 and will expire on November 30, 2009, unless renewed.

2 JURISDICTION

3 4. Accusation No. 2008-206 was filed before the Board of Registered
4 Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent.
5 The Accusation and all other statutorily required documents were properly served on Respondent
6 on January 14, 2008. Respondent timely filed her Notice of Defense contesting the Accusation.
7 A copy of Accusation No. 2008-206 is attached as exhibit A and incorporated herein by
8 reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and
11 understands the charges and allegations in Accusation No. 2008-206. Respondent has also
12 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
13 Settlement and Disciplinary Order.

14 6. Respondent is fully aware of her legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
16 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
17 the right to present evidence and to testify on her own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation No. 2008-206.

26 9. Respondent agrees that her Registered Nurse License is subject to
27 discipline and she agrees to be bound by the Board of Registered Nursing (Board)'s imposition of
28 discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent Cherie Diane Maack has never been the subject of any disciplinary action. She is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 681933 issued to Respondent Cherie Diane Maack is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid

1 and enforceable to the fullest extent permitted by law.

2 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
3 A full and detailed account of any and all violations of law shall be reported by Respondent to
4 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
5 compliance with this condition, Respondent shall submit completed fingerprint forms and
6 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
7 as part of the licensure application process.

8 **Criminal Court Orders:** If Respondent is under criminal court orders, including
9 probation or parole, and the order is violated, this shall be deemed a violation of these probation
10 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

11 2. **Comply with the Board's Probation Program.** Respondent shall fully
12 comply with the conditions of the Probation Program established by the Board and cooperate
13 with representatives of the Board in its monitoring and investigation of the Respondent's
14 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
15 within no more than 15 days of any address change and shall at all times maintain an active,
16 current license status with the Board, including during any period of suspension.

17 Upon successful completion of probation, Respondent's license shall be fully
18 restored.

19 3. **Report in Person.** Respondent, during the period of probation, shall
20 appear in person at interviews/meetings as directed by the Board or its designated
21 representatives.

22 4. **Residency, Practice, or Licensure Outside of State.** Periods of
23 residency or practice as a registered nurse outside of California shall not apply toward a reduction
24 of this probation time period. Respondent's probation is tolled, if and when she resides outside
25 of California. Respondent must provide written notice to the Board within 15 days of any change
26 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
27 returning to practice in this state.

28 Respondent shall provide a list of all states and territories where she has ever been

1 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
2 provide information regarding the status of each license and any changes in such license status
3 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
4 new nursing license during the term of probation.

5 **5. Submit Written Reports.** Respondent, during the period of probation,
6 shall submit or cause to be submitted such written reports/declarations and verification of actions
7 under penalty of perjury, as required by the Board. These reports/declarations shall contain
8 statements relative to Respondent's compliance with all the conditions of the Board's Probation
9 Program. Respondent shall immediately execute all release of information forms as may be
10 required by the Board or its representatives.

11 Respondent shall provide a copy of this Decision to the nursing regulatory agency
12 in every state and territory in which she has a registered nurse license.

13 **6. Function as a Registered Nurse.** Respondent, during the period of
14 probation, shall engage in the practice of registered nursing in California for a minimum of 24
15 hours per week for 6 consecutive months or as determined by the Board.

16 For purposes of compliance with the section, "engage in the practice of registered
17 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
18 work in any non-direct patient care position that requires licensure as a registered nurse.

19 The Board may require that advanced practice nurses engage in advanced practice
20 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
21 Board.

22 If Respondent has not complied with this condition during the probationary term,
23 and Respondent has presented sufficient documentation of her good faith efforts to comply with
24 this condition, and if no other conditions have been violated, the Board, in its discretion, may
25 grant an extension of Respondent's probation period up to one year without further hearing in
26 order to comply with this condition. During the one year extension, all original conditions of
27 probation shall apply.

28 **7. Employment Approval and Reporting Requirements.** Respondent

1 shall obtain prior approval from the Board before commencing or continuing any employment,
2 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
3 performance evaluations and other employment related reports as a registered nurse upon request
4 of the Board.

5 Respondent shall provide a copy of this Decision to her employer and immediate
6 supervisors prior to commencement of any nursing or other health care related employment.

7 In addition to the above, Respondent shall notify the Board in writing within
8 seventy-two (72) hours after she obtains any nursing or other health care related employment.
9 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
10 terminated or separated, regardless of cause, from any nursing, or other health care related
11 employment with a full explanation of the circumstances surrounding the termination or
12 separation.

13 8. **Supervision.** Respondent shall obtain prior approval from the Board
14 regarding Respondent's level of supervision and/or collaboration before commencing or
15 continuing any employment as a registered nurse, or education and training that includes patient
16 care.

17 Respondent shall practice only under the direct supervision of a registered nurse
18 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
19 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
20 are approved.

21 Respondent's level of supervision and/or collaboration may include, but is not
22 limited to the following:

23 (a) Maximum - The individual providing supervision and/or collaboration is
24 present in the patient care area or in any other work setting at all times.

25 (b) Moderate - The individual providing supervision and/or collaboration is in
26 the patient care unit or in any other work setting at least half the hours Respondent works.

27 (c) Minimum - The individual providing supervision and/or collaboration has
28 person-to-person communication with Respondent at least twice during each shift worked.

1 (d) Home Health Care - If Respondent is approved to work in the home health
2 care setting, the individual providing supervision and/or collaboration shall have person-to-
3 person communication with Respondent as required by the Board each work day. Respondent
4 shall maintain telephone or other telecommunication contact with the individual providing
5 supervision and/or collaboration as required by the Board during each work day. The individual
6 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
7 site visits to patients' homes visited by Respondent with or without Respondent present.

8 9. **Employment Limitations.** Respondent shall not work for a nurse's
9 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
10 traveling nurse, or for an in-house nursing pool.

11 Respondent shall not work for a licensed home health agency as a visiting nurse
12 unless the registered nursing supervision and other protections for home visits have been
13 approved by the Board. Respondent shall not work in any other registered nursing occupation
14 where home visits are required.

15 Respondent shall not work in any health care setting as a supervisor of registered
16 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
17 nurses and/or unlicensed assistive personnel on a case-by-case basis.

18 Respondent shall not work as a faculty member in an approved school of nursing
19 or as an instructor in a Board approved continuing education program.

20 Respondent shall work only on a regularly assigned, identified and predetermined
21 worksite(s) and shall not work in a float capacity.

22 If Respondent is working or intends to work in excess of 40 hours per week, the
23 Board may request documentation to determine whether there should be restrictions on the hours
24 of work.

25 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
26 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
27 than six months prior to the end of her probationary term.

28 Respondent shall obtain prior approval from the Board before enrolling in the

1 course(s). Respondent shall submit to the Board the original transcripts or certificates of
2 completion for the above required course(s). The Board shall return the original documents to
3 Respondent after photocopying them for its records.

4 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
5 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
6 amount of \$1,501.00. Respondent shall be permitted to pay these costs in a payment plan
7 approved by the Board, with payments to be completed no later than three months prior to the
8 end of the probation term.

9 If Respondent has not complied with this condition during the probationary term,
10 and Respondent has presented sufficient documentation of her good faith efforts to comply with
11 this condition, and if no other conditions have been violated, the Board, in its discretion, may
12 grant an extension of Respondent's probation period up to one year without further hearing in
13 order to comply with this condition. During the one year extension, all original conditions of
14 probation will apply.

15 12. **Violation of Probation.** If Respondent violates the conditions of her
16 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
17 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

18 If during the period of probation, an accusation or petition to revoke probation has
19 been filed against Respondent's license or the Attorney General's Office has been requested to
20 prepare an accusation or petition to revoke probation against Respondent's license, the
21 probationary period shall automatically be extended and shall not expire until the accusation or
22 petition has been acted upon by the Board.

23 13. **License Surrender.** During Respondent's term of probation, if she ceases
24 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
25 probation, Respondent may surrender her license to the Board. The Board reserves the right to
26 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
27 take any other action deemed appropriate and reasonable under the circumstances, without
28 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent

1 will no longer be subject to the conditions of probation.

2 Surrender of Respondent's license shall be considered a disciplinary action and
3 shall become a part of Respondent's license history with the Board. A registered nurse whose
4 license has been surrendered may petition the Board for reinstatement no sooner than the
5 following minimum periods from the effective date of the disciplinary decision:

6 (1) Two years for reinstatement of a license that was surrendered for any
7 reason other than a mental or physical illness; or

8 (2) One year for a license surrendered for a mental or physical illness.

9 14. **Physical Examination.** Within 45 days of the effective date of this
10 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
11 physician assistant, who is approved by the Board before the assessment is performed, submit an
12 assessment of the Respondent's physical condition and capability to perform the duties of a
13 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
14 medically determined, a recommended treatment program will be instituted and followed by the
15 Respondent with the physician, nurse practitioner, or physician assistant providing written
16 reports to the Board on forms provided by the Board.

17 If Respondent is determined to be unable to practice safely as a registered nurse,
18 the licensed physician, nurse practitioner, or physician assistant making this determination shall
19 immediately notify the Board and Respondent by telephone, and the Board shall request that the
20 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
21 shall immediately cease practice and shall not resume practice until notified by the Board.
22 During this period of suspension, Respondent shall not engage in any practice for which a license
23 issued by the Board is required until the Board has notified Respondent that a medical
24 determination permits Respondent to resume practice. This period of suspension will not apply
25 to the reduction of this probationary time period.

26 If Respondent fails to have the above assessment submitted to the Board within
27 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
28 practice until notified by the Board. This period of suspension will not apply to the reduction of

1 this probationary time period. The Board may waive or postpone this suspension only if
2 significant, documented evidence of mitigation is provided. Such evidence must establish good
3 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
4 provided. Only one such waiver or extension may be permitted.

5 **15. Participate in Treatment/Rehabilitation Program for Chemical**
6 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
7 period or shall have successfully completed prior to commencement of probation a Board-
8 approved treatment/rehabilitation program of at least six months duration. As required, reports
9 shall be submitted by the program on forms provided by the Board. If Respondent has not
10 completed a Board-approved treatment/rehabilitation program prior to commencement of
11 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
12 a program. If a program is not successfully completed within the first nine months of probation,
13 the Board shall consider Respondent in violation of probation.

14 Based on Board recommendation, each week Respondent shall be required to
15 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
16 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
17 by the Board. If a nurse support group is not available, an additional 12-step meeting or
18 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
19 such attendance to the Board during the entire period of probation. Respondent shall continue
20 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
21 mental health examiner and/or other ongoing recovery groups.

22 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
23 shall completely abstain from the possession, injection or consumption by any route of all
24 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
25 the same are ordered by a health care professional legally authorized to do so as part of
26 documented medical treatment. Respondent shall have sent to the Board, in writing and within
27 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
28 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the

1 medication will no longer be required, and the effect on the recovery plan, if appropriate.

2 Respondent shall identify for the Board a single physician, nurse practitioner or
3 physician assistant who shall be aware of Respondent's history of substance abuse and will
4 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
5 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
6 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
7 condition. If any substances considered addictive have been prescribed, the report shall identify a
8 program for the time limited use of any such substances.

9 The Board may require the single coordinating physician, nurse practitioner, or
10 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
11 addictive medicine.

12 **17. Submit to Tests and Samples.** Respondent, at her expense, shall
13 participate in a random, biological fluid testing or a drug screening program which the Board
14 approves. The length of time and frequency will be subject to approval by the Board.
15 Respondent is responsible for keeping the Board informed of Respondent's current telephone
16 number at all times. Respondent shall also ensure that messages may be left at the telephone
17 number when she is not available and ensure that reports are submitted directly by the testing
18 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
19 to the Board by the program and Respondent shall be considered in violation of probation.

20 In addition, Respondent, at any time during the period of probation, shall fully
21 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
22 tests and samples as the Board or its representatives may require for the detection of alcohol,
23 narcotics, hypnotics, dangerous drugs, or other controlled substances.

24 If Respondent has a positive drug screen for any substance not legally authorized
25 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
26 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
27 from practice pending the final decision on the petition to revoke probation or the accusation.
28 This period of suspension will not apply to the reduction of this probationary time period.

1 If Respondent fails to participate in a random, biological fluid testing or drug
2 screening program within the specified time frame, Respondent shall immediately cease practice
3 and shall not resume practice until notified by the Board. After taking into account documented
4 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
5 Board may suspend Respondent from practice pending the final decision on the petition to
6 revoke probation or the accusation. This period of suspension will not apply to the reduction of
7 this probationary time period.

8 **18. Mental Health Examination.** Respondent shall, within 45 days of the
9 effective date of this Decision, have a mental health examination including psychological testing
10 as appropriate to determine her capability to perform the duties of a registered nurse. The
11 examination will be performed by a psychiatrist, psychologist or other licensed mental health
12 practitioner approved by the Board. The examining mental health practitioner will submit a
13 written report of that assessment and recommendations to the Board. All costs are the
14 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
15 result of the mental health examination will be instituted and followed by Respondent.

16 If Respondent is determined to be unable to practice safely as a registered nurse,
17 the licensed mental health care practitioner making this determination shall immediately notify
18 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
19 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
20 practice and may not resume practice until notified by the Board. During this period of
21 suspension, Respondent shall not engage in any practice for which a license issued by the Board
22 is required, until the Board has notified Respondent that a mental health determination permits
23 Respondent to resume practice. This period of suspension will not apply to the reduction of this
24 probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within
26 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
27 practice until notified by the Board. This period of suspension will not apply to the reduction of
28 this probationary time period. The Board may waive or postpone this suspension only if

1 significant, documented evidence of mitigation is provided. Such evidence must establish good
2 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
3 provided. Only one such waiver or extension may be permitted.

4 19. **Therapy or Counseling Program.** Respondent, at her expense, shall
5 participate in an on-going counseling program until such time as the Board releases her from this
6 requirement and only upon the recommendation of the counselor. Written progress reports from
7 the counselor will be required at various intervals.

8

9

ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and
11 have fully discussed it with my attorney, Stephen M. Gallenson. I understand the stipulation and
12 the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement
13 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the Board of Registered Nursing.

15 DATED: 2/29/08

16

17


18 **CHERIE DIANE MAACK**
Respondent

19


20 I have read and fully discussed with Respondent Cherie Diane Maack the terms
21 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
22 Order. I approve its form and content.

23 DATED: 2-29-08

24

25

26


27 **STEPHEN M. GALLENSON**
Attorney for Respondent

28

///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 2/29/08

EDMUND G. BROWN JR., Attorney General
of the State of California

FRANK H. PACOE
Supervising Deputy Attorney General



CHAR SACHSON
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2007403236
40222120.wpd

Exhibit A
Accusation No. 2008-206

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 FRANK H. PACOE

Supervising Deputy Attorney General

3 CHAR SACHSON, State Bar No. 161032

Deputy Attorney General

4 455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102-7004

5 Telephone: (415) 703-5558

Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 CHERIE DIANE MAACK

14 919 1/2 Link Lane

Santa Rosa, CA 95401

15 Registered Nurse License No. 681933

Respondent.

Case No. 2008-206

ACCUSATION

16
17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about June 29, 2006, the Board of Registered Nursing issued
23 Registered Nurse License Number 681933 to Cherie Diane Maack (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on November 30, 2009, unless renewed.

26
27 JURISDICTION

28 3. This Accusation is brought before the Board of Registered Nursing

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 2761 states:

4 "The board may take disciplinary action against a certified or licensed nurse or
5 deny an application for a certificate or license for any of the following:

6 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

7 ...

8 "(f) Conviction of a felony or of any offense substantially related to the
9 qualifications, functions, and duties of a registered nurse, in which event the record of the
10 conviction shall be conclusive evidence thereof."

11 ...

12 5. Section 2762 states:

13 "In addition to other acts constituting unprofessional conduct within the meaning
14 of this chapter [chapter 6, commencing with section 2700], it is unprofessional conduct for a
15 person licensed under this chapter to do any of the following:

16 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
17 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
18 or administer to another, any controlled substance as defined in Division 10 (commencing with
19 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
20 defined in Section 4022.

21 "(b) Use any controlled substance as defined in Division 10 (commencing with
22 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
23 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
24 injurious to himself or herself, any other person, or the public or to the extent that such use
25 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
26 license.

27 "(c) Be convicted of a criminal offense involving the prescription, consumption,
28 or self-administration of any of the substances described in subdivisions (a) and (b) of this

1 section, or the possession of, or falsification of a record pertaining to, the substances described in
2 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
3 thereof.

4
5 6. Section 490 states:

6 "A board may suspend or revoke a license on the ground that the licensee has been
7 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
8 of the business or profession for which the license was issued. A conviction within the meaning
9 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
10 contendere. Any action which a board is permitted to take following the establishment of a
11 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
12 been affirmed on appeal, or when an order granting probation is made suspending the imposition
13 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
14 Penal Code."

15 7. Section 125.3, subdivision (a), states, in pertinent part:

16 "Except as otherwise provided by law, in any order issued in resolution of a
17 disciplinary proceeding before any board within the department . . . the board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations
19 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case."

21 8. Section 2764 states:

22 "The lapsing or suspension of a license by operation of law or by order or decision
23 of the board or a court of law, or the voluntary suspension of a license by a licentiate shall not
24 deprive the board of jurisdiction to proceed with any investigation of or disciplinary proceeding
25 against such license, or to render a decision suspending or revoking such license."

26 9. California Code of Regulations, title 16, section 1444, states:

27 "A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the

1 warrantless searches and random chemical testing; abstain from possessing and using alcohol or
2 controlled substances without a valid prescription; and pay \$2020.00 in fees, *inter alia*.

3
4 SECOND CAUSE FOR DISCIPLINE

5 (USING ALCOHOLIC BEVERAGES IN A DANGEROUS MANNER)

6 11. Respondent's license is subject to discipline under sections 490, 2761(a),
7 and/or 2762(b) in that Respondent used alcoholic beverages in a manner dangerous to herself and
8 others, as alleged in paragraph 10a. above.

9
10 PRAYER

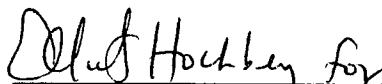
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nurse License Number 681933, issued
14 to Cherie Diane Maack.

15 2. Ordering Cherie Diane Maack to pay the Board of Registered Nursing the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3;

18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 1/2/08

21
22 
23 RUTH ANN TERRY, M.P.H., R.N.
24 Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant